



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FTI/171171

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**PRELIMINARY RECITALS**

Pursuant to a petition filed January 04, 2016, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Rock County Department of Social Services in regard to FoodShare benefits (FS), a hearing was held on March 01, 2016, at Janesville, Wisconsin.

The issue for determination is whether the respondent correctly instituted a tax intercept.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]

Rock County Department of Social Services  
1900 Center Avenue  
PO Box 1649  
Janesville, WI 53546

**ADMINISTRATIVE LAW JUDGE:**

Peter McCombs (telephonically)  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Rock County.
2. On July 31, 2015, the agency sent the Petitioner a Notification of FoodShare Overissuance, Claim Number [REDACTED], indicating her household was overissued FoodShare benefits in the amount of \$862.00 for the period of September 1, 2014 – January 31, 2015.
3. The agency sent Petitioner a repayment agreement on August 4, 2015.

4. The agency sent the Petitioner dunning notices (reminders about the debt) on September 2, 2015, October 5, 2015 and November 3, 2015.
5. On December 11, 2015, the agency sent the Petitioner a notice of State tax intercept, advising her that, "Any Wisconsin State Income Tax Refund, Wisconsin State tax credit or Wisconsin lottery winnings due you in the future will be applied to this debt."
6. The Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on January 4, 2016.

### **DISCUSSION**

The federal regulation concerning FoodShare overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FoodShare due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b); see also *FoodShare Wisconsin Handbook (FSH)*, App. §7.3.2.1. As such, it does not matter whose error caused the overpayment; it must be recouped.

The Petitioner filed an appeal because she does not think that the overpayment was correctly calculated due to child support income not actually received. The respondent stated that the overpayment calculation did not include any unearned income, such as child support.

With regard to the underlying overpayment, the Petitioner's appeal is untimely.

The Federal Regulations state the following with regard to appeal deadlines:

1. A household shall be allowed to request a hearing on **any action by the State agency** or loss of benefits which occurred in the prior 90 days.

A State / agency action includes a refusal to restore benefits lost more than 90-days, but less than 1 year prior to the recipient's request to restore the benefits.

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7 CFR 273.15(g)

Petitioner's January 4, 2016, appeal was filed well beyond 90-days from the date of the July 31, 2015, overpayment notice. As such, there is no jurisdiction to consider the merits of her appeal of the underlying overpayment.

With regard to the State Tax Intercept, Petitioner's appeal is also ultimately fails. The State of Wisconsin Public Assistance Collections Unit uses tax intercept from both state and federal tax refunds to recover overpayments from anyone who has become delinquent in repayment of an overissuance.

To use tax intercept, the person must have received three or more dunning notices. FoodShare Handbook § 7.3.2.10.

A person who makes a repayment agreement may not be subject to tax intercept as long as s/he is meeting the conditions of the agreement. If a person has received three dunning notices, s/he is subject to both tax intercept and monthly repayment. FoodShare Handbook § 7.3.2.12.

The respondent has the right to intercept petitioner's tax refund. The department had that right even were petitioner to establish that she did not receive the tax intercept notice. State law requires only that the

notice be sent to the last known address, not that the person actually receive it. Wis. Stat., §49.85(3)(a). The respondent has issued the required refund interception notices here.

### **CONCLUSIONS OF LAW**

1. Petitioner's appeal of the underlying FoodShare overpayment is untimely.
2. The respondent has correctly pursued the State Tax Intercept.

**THEREFORE, it is**

### **ORDERED**

That the petition is dismissed in its entirety.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 28th day of March, 2016

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\sPeter McCombs  
Administrative Law Judge  
Division of Hearings and Appeals





**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on March 28, 2016.

Rock County Department of Social Services  
Public Assistance Collection Unit